IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 866 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SABARMATI INVESTMENT PVT LTD.

Versus

CHIEF COMMISSIONER OF INCOME TAX

Appearance:

1. Special Civil Application No. 866 of 2004

MR SN SOPARKAR SR. ADVOCATE WITH MRS SWATI SOPARKAR
AND MR TP HEMANI for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 19/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule.

Mr. Manish R. Bhatt, learned standing counsel for the revenue, waives service of notice of rule for the respondent.

In the facts and circumstances of the case, the petition is heard for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is the stand taken by the respondent authorities rejecting the petitioner's request to apply the circular dated 29.7.2003 (Annexure "C" to the petition) to the petitioner's case for compounding as regards reduction in the compounding fee.

3. The petitioner had made an application for compounding of Criminal Case No.80 of 1991 filed before the Court of learned Additional Chief Metropolitan Magistrate, Ahmedabad in respect of complaints filed under Sections 276 (C) and 277 read with Section 278B of the Income-tax Act, 1961. The complaint was regarding evasion of tax to the tune of Rs.1,07,162/- including tax at maximum marginal rate at the rate of 65% and surcharge at 25%.

When the application was made in the year 2002, compounding fee applicable was worked out to Rs.2,14,324/- (i.e., 200% of the amount of tax sought to be evaded) plus Rs.21,432/- (i.e., 10% establishment charges on Rs.2,14,324/- aggregating to Rs.2,35,756/-. The Income-tax Officer, Ahmedabad communicated the above computation of compounding fee to the official liquidator of the petitioner company by letter dated 26.7.2002 (Annexure "A" to the petition).

Vide letter dated 6.9.2002 (Annexure 'I' to the reply affidavit) the Liquidator of the petitioner company communicated that they were agreeable to pay Rs.2,35,756/for compounding the aforesaid Criminal Case No.80 of 2001.

It appears that thereafter nothing happened till 5.8.2003 when the Income-tax Officer, Ahmedabad informed the petitioner vide letter dated 5.8.2003 (Annexure "B" to the petition) that the Central Board of Direct Taxes have conveyed their approval for compounding the above Criminal Case in respect of the assessment year 1982-83 subject - to payment of full compounding fee of Rs.2,35,756/- including establishment charges of

Rs.21,432/- The petitioner was therefore called upon to make payment at the earliest and to produce the proof thereof.

By letter dated 13.8.2003 (Annexure D-1 to the petition) the petitioner requested the Commissioner of Income-tax that in view of the revised guidelines dated 29.7.2003 (Annexure C to the petition) the compounding fee may be reduced to 50% of the tax.

However, by letter dated 2.1.2004 (Annexure E-2 to the petition) the Income-tax Officer for Chief Commissioner of Income-tax informed the petitioner that the compounding fee as determined by the Central Board for Direct Taxes and communicated by letter dated 5.8.2003, i.e., an amount of Rs.2,35,756/- has to be paid. Hence this petition.

4. Mr. Saurabh Soparkar, learned counsel for the petitioner, has submitted that in the circular dated 29.7.2003 reducing the amount of compounding fee it has been specifically stated in clause (3) that the above amendments shall be applicable to future as well as to cases pending at any stage and therefore the respondent authorities are not justified in not reducing the compounding fee in accordance with the circuler dated 29.7.2003.

Reliance is also placed on paragraph 2 of the letter dated 2.1.2004 (Annexure E-2 to the petition) wherein it has been specifically stated that no order for compounding of prosecution proceedings has been passed in the petiioner's case by the Chief Commissioner of Income-tax.

5. On the other hand, Mr. Manish R. Bhatt, learned counsel for the revenue, has submitted that compounding can be said to have been taken place as soon as the petitioner agreed on 6.9.2002 to pay compounding fee of Rs.2,35,756/- in respect of the criminal case and hence the circular dated 29.7.2003 is not applicable to the petitioner's case.

6. Having heard the learned counsel for the parties, it appears to the Court that no order of compounding was passed even till 2.1.2004 as stated in the letter dated 2.1.2004 (Annexure E-2 to the petition). It cannot be said that compounding had taken place merely because the petitioner had agreed by its letter dated 6.7.2002 to pay compounding fee of Rs.2,35,756 as worked out by the Income-tax Officer, Ahmedabad and communicated to the

petitioner vide letter dated 26.7.2002 (Annexure A to the petition). The petitioner's case was pending on 29.7.2003 when the Central Board of Direct Taxes issued circular reducing compounding fees. The relevant clause of the circular and paragraph of the circular are required to be set out as under:

"(V) Section 276C(1) willful attempt to evade tax, etc..

Under the existing Guidelines, the fee is:

(a) If the amount sought to be evaded is less than Rs one lakh, the compounding fee shall be 100% of amount sought to be evaded.

(b) If the amount sought to be evaded is more than Rs one lakh, the compounding fee shall be 200% of the amount sought to be evaded.

It has now been reduced to 50% of amount sought to be evaded irrespective of the amount sought to be evaded.

2. All other provisions of the existing Guidelines and clarifications issued subsequently from time to time shall continue to be applicable.

3. Above amendments shall be applicable to future as well as to cases pending at any stage. However, the offences already compounded shall not be reconsidered."

(Emphasis supplied)

In absence of paragraph 3 there could have been some scope for controversy whether the circular would be applicable to the pending cases or not. Paragraph 3 unambiguously and in clear terms provides not only that the amendments, that is reduction of compounding fee, shall be applied to future as well as to pending cases but it further states that the amendments shall be applicable to "cases pending at any stage". It is only when the offence is already compounded that the case is not to be reconsidered and the circular will not be applicable. But there is nothing on record to show that the offence in question was compounded before 29.7.2003. Even the intimation by the Income-tax Officer of the decision of the Central Board of Direct Taxes about its

approval for compounding the case subject to payment of Rs.2,35,756/- by letter dated 5.8.2003 calling upon the petitioner to make the payment indicates that the case for compounding was pending on 5.8.2003. So also the letter dated 2.1.2004 (Annexure E-2) states in no uncertain terms as under:

"On verification of the records it is seen that no order for compounding of prosecution proceedings u/s. 276C & 277 r.w.s. 278B of the I.T.Act has been passed in your case by the CCIT, therefore, the question of providing a copy of the same does not arise."

In view of the above factual aspects, it has to be held that no compounding of the offence in question had taken place when the circular dated 29.7.2003 (Annexure C to the petition) was issued by the Central Board of Direct Taxes.

7. In view of the above discussion, the petition is allowed. The respondent is directed to apply the circular dated 29.7.2003 (Annexure C to the petition) to the petitioner's case for compounding the offence.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)